

IDAHO POTATO COMMISSION RULEMAKING HEARING
July 24, 2018

Idaho Potato Commission
661 South Rivershore Lane, Suite 230
Eagle, Idaho 83816

TRANSCRIPTION BY:
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Shawn Boyle

Rep. Megan Blanksma

Rep. Thomas Dayley

Seth Pemsler

Ross Johnson

Karin Searle

Andrew Mickelsen

Stephanie Mickelsen

1 (Proceedings begin.)

2 MR. KANE: If we can. It looks like everybody's
3 still taking their seats. Quite a few people here. Are we
4 ready to go?

5 MR. KOLE: Yes, sir.

6 MR. KANE: All right. Good afternoon, everyone.
7 This is the time and place set for the negotiated rule-
8 making open session hearing regarding IDAPA 29.01.03, rules
9 governing nominations and elections for candidates for
10 elected for commissioner, Docket No. 29-0103-1801.

11 This hearing is being taken pursuant to notice.
12 This is the first of three hearings. Today's date is July
13 24, 2018. We are here at the Idaho Potato Commission
14 offices on 661 South River Shore Lane, Suite 230, Eagle,
15 Idaho, 83816. There will be two more hearings regarding
16 this matter. They will be Tuesday July 31, 2018, Burley
17 Inn, and Wednesday, August 1 at Shoshone Bannock Hotel.

18 There are quite a few people here. Let me
19 introduce myself. My name is Michael Kane. I'm an
20 attorney in Boise. I often times am called to do these
21 kind of hearings and I find them to be quite interesting
22 although this is my first time with the potato commission.

23 Let me know what -- let me let you know what I've
24 looked at so far which is obviously the proposed rules that
25 the commission wishes to have adopted and also a series of

1 proposed statutes and then a letter from the Idaho Deputy
2 Attorney General Brian Kane dated April 2 of 2018. I
3 should tell everyone Brian Kane and Mike Kane are not
4 related. It's amazing how many people in this state think
5 that I'm his father. I'm not.

6 I've also reviewed the letter from Mr. Pat Kole
7 sent to Attorney General Wasden on March 23, 2018, and
8 that's about what I've reviewed so far. I see that there
9 are -- there's an invitation to make written comments that
10 will close on Wednesday, August 15. As of now, I have not
11 seen any written comments but I've just been handed a
12 series of proposed exhibits which I believe are the
13 commission's exhibits; is that correct?

14 MR. KOLE: That's correct, sir.

15 MR. KANE: And we'll go through them in a moment.
16 I want everyone here to know that you are being recorded
17 and so if anyone has comments to make regarding this
18 matter, I'm going to ask you to come up here and sit to my
19 right. We'll put a microphone in front of you and let you
20 make any comment that you wish to make.

21 So with that -- let's see. Can I see the sign-in
22 sheet? Has everyone signed in?

23 MR. KOLE: I think it's still being --

24 MR. KANE: It's still in the works? While we're
25 doing that then, why don't we make a record of the exhibits

1 that I've just been handed. My plan will be to take these
2 exhibits away with me and examine them and I assume they
3 will be published for the people who wish to speak, if any,
4 at the next two hearings as well. Correct?

5 MR. KOLE: Correct.

6 MR. KANE: Would you propose to have a screen
7 similar to what you've done today?

8 MR. KOLE: Yes, I think we will.

9 MR. KANE: All right. Okay. Well, let's get these
10 into the record then. So I'm going to go through them one
11 at a time and let you know what they all are. They're
12 going to come up on the screen here and as far as I can
13 tell, these are all being proposed by the commission's
14 attorney and the commission itself, correct?

15 MR. KOLE: Correct.

16 MR. KANE: All right. Well, then, the first one is
17 Exhibit No. 100. That is a Nomination Process for Idaho
18 Potato Commissioners and it seems to be a series of -- is
19 it statutes that are currently in place?

20 MR. KOLE: Correct.

21 MR. KANE: All right. Thank you. That consists of
22 three pages. The next document is Idaho exhibit -- I'm
23 sorry, Exhibit 101, Idaho Potato Commission Grower
24 Nominating Ballot. It's a blank ballot form and for my
25 information, is that the current form or what is going to

1 be proposed?

2 MR. KOLE: That's the current form.

3 MR. KANE: All right. Next is Exhibit 102, Idaho
4 Potato Commission Processor Nominating Ballot and would I
5 take it this is the current ballot form?

6 MR. KOLE: It is.

7 MR. KANE: Next is 103, Idaho Potato Commission
8 Shipper Nominating Ballot and I guess this is also the
9 current ballot, correct?

10 MR. KOLE: Correct.

11 MR. KANE: Okay. Next is Exhibit 104, Voting
12 Proxy. It's got some blanked out names and a date of March
13 17, 2018. I'm taking it this is a ballot -- a proxy rather
14 of some kind that has been used in the past by this agency?

15 MR. KOLE: Not by this agency. This is what the
16 genesis of the rulemaking is. These were submitted at the
17 nomination meeting held in Idaho Falls and the -- are
18 referenced in the letter to the attorney general and the
19 attorney general's response.

20 MR. KANE: All right. So this is one of the things
21 that the attorney general was speaking to.

22 MR. KOLE: Correct.

23 MR. KANE: All right. Thank you. 105, Absentee
24 Ballot also marked out with some names on it. Am I taking
25 it this is another document that was examined by the

1 attorney general's office?

2 MR. KOLE: Correct.

3 MR. KANE: 106 is the letter I referred to earlier
4 which I have seen before by Mr. Patrick Kole to General
5 Wasden dated March 23, 2018, and 107 as I've already
6 referred to is the response from Brian Kane of the attorney
7 general's office dated April 2, 2018. And, again, I have
8 reviewed this.

9 Exhibit 108 is -- appears to be a letter authored
10 by Patrick Kole dated April 20, 2018, "Dear Grower
11 Commissioner Nominees," and it seems to refer to amended
12 agenda no. 1 which is attached for April 25 of 2018. I'm
13 sure you're going to explain what this is about.

14 MR. KOLE: Yes.

15 MR. KANE: All right. Thank you. Exhibit 109 is
16 Administrative Rules Request Form which appears to be
17 filled out. I assume that's what has got us here today.

18 MR. KOLE: Correct.

19 MR. KANE: Exhibit 110 is what appears to be the
20 docket that I referred to earlier regarding the three
21 negotiated rulemaking meetings. I think that's
22 Exhibit 110. I believe this is identical to what you've
23 already sent me.

24 MR. KOLE: Yes.

25 MR. KANE: It appears to be. Thank you.

1 Exhibit 111 appears to be a statutory scheme for written
2 interpretations, agency guidelines, administrative appeals,
3 et cetera, for the Idaho Potato Commission.

4 MR. KOLE: 111 would be the proposed rules.

5 MR. KANE: All right. These are the proposed rules
6 then. Great. Thank you. With the big gigantic word
7 "draft" on it. That tells me something.

8 Exhibit 112 is -- appears to be a computer screen
9 of some kind titled "Critical Statute Changes for the Idaho
10 Potato Commission." Contact Patrick Kole, contact Gracie
11 Bingham. You'll explain what this is?

12 MR. KOLE: Correct. This was the proposed
13 statutory changes that was submitted pursuant to the
14 requirements of the governor's office to their electronic
15 system.

16 MR. KANE: All right. Exhibit 113 and 114 and 115
17 all appear to be proposed draft statutes -- draft bills
18 rather that are going to amend the potato commission's
19 statutes and my understanding from speaking to Mr. Kole,
20 these may have been changed somewhat since the last time
21 I've been given anything.

22 MR. KOLE: I think they've been changed since you
23 received them but I think these are the ones that we're
24 discussing today.

25 MR. KANE: All right. So the ones that I have

1 originally seen apparently have been replaced by these
2 exhibits.

3 MR. KOLE: Yes. Minor changes.

4 MR. KANE: My understanding that the commission has
5 made these minor changes after discussion with one of our
6 legislators?

7 MR. KOLE: Yes.

8 MR. KANE: All right. Thank you. Exhibit 116
9 appears to be another computer screen I think, Negotiated
10 Rulemaking Meeting which seemed to be electronic notice of
11 this same information that we have in writing before us,
12 correct?

13 MR. KOLE: Correct. This is actually from the
14 Idaho Potato Commission website and so this is a screen of
15 the information that was posted about this proceeding and
16 the subsequent hearings on the IPC website.

17 MR. KANE: All right. Thank you. Exhibit 116
18 (sic) is a letter dated July 6, 2018, re: 2018 IPC
19 Rulemaking Information. "Dear Potato Industry
20 Stakeholder." I'm guessing this went out to the public.

21 MR. KOLE: Correct.

22 MR. KANE: And would that have been done
23 electronically or individually to each stakeholder?

24 MR. KOLE: This was done electronically.

25 MR. KANE: Exhibit 118 is the Idaho Potato Pulse

1 which appears to be yet another announcement for the
2 proposed rules that we'll be speaking about today and the
3 statutes.

4 MR. KOLE: Yes.

5 MR. KANE: Again, authored apparently by Patrick
6 Kole. Exhibit 119 is apparently a current statute dealing
7 with the Idaho Wheat Commission, correct?

8 MR. KOLE: Correct.

9 MR. KANE: Which I assume you'll be speaking to.

10 MR. KOLE: I will.

11 MR. KANE: All right. And then 120 appears to be a
12 current statute as well also dealing with the wheat
13 commission.

14 MR. KOLE: Correct.

15 MR. KANE: 121 is apparently a current statute
16 regarding the barley commission.

17 MR. KOLE: Correct.

18 MR. KANE: 122 is also apparently a current
19 statute -- this appears to be a bill of some kind perhaps
20 taken from the session laws circa 2012 regarding the barley
21 commission.

22 MR. KOLE: Correct.

23 MR. KANE: Was this bill subsequently adopted into
24 statute?

25 MR. KOLE: It was. Just for the -- because you've

1 got these right now, the purpose of including this is one
2 of the changes that was made to the statutory -- to the
3 bills that are being proposed, in both instances, the
4 governor's office indicated that they wanted to have
5 commissioners serve at the pleasure of the governor and
6 there's another larger statute that was also adopted about
7 the same time that touched upon another 56 different
8 government boards and commissions -- State of Idaho
9 government boards and commissions all saying that
10 commissioners for -- whether it was the Board of
11 Accountancy or the Board of Professional Land Surveyors all
12 served at the pleasure of the governor.

13 MR. KANE: All right. Was that all done in 2012?

14 MR. KOLE: A lot of it was but some of it was not.

15 MR. KANE: Okay.

16 MR. KOLE: So the reason for this inclusion is in
17 the language that you would see in Exhibit 113. It was
18 changed to provide that commissioners of the Idaho Potato
19 Commission would also serve at the pleasure of the
20 governor.

21 MR. KANE: All right. That appears to be all of
22 the exhibits and I don't know that we need to enter them as
23 if they were evidence in a court proceeding but I do take
24 note of them and administrative notice and, again, you are
25 asking me to examine all of these in making my

1 recommendation, correct?

2 MR. KOLE: Correct.

3 MR. KANE: All right. Thank you. Do we have the
4 sign-up sheet ready to go or is that still in the works?

5 All right. Now this says "Rulemaking Hearing, July
6 24, 2018." I'm not going to count them. I'm not clear
7 from looking at this whether all of the people wish to
8 speak today or if this is just making a record of who you
9 are and that you're here. Maybe I can get a show of hands
10 if you can tell me how many people -- just show your hands.
11 Who wishes to actually address me today? One, two, three,
12 four. Okay. About four or five people it appears to be
13 which is obviously considerably shorter than what I'm
14 looking at here.

15 So here's how I would propose to do this. I would
16 ask Mr. Kole to begin his presentation and tell us what
17 this is all about, how you got here and why you're doing
18 this. Refer to the exhibits as you need to. Explain to
19 everyone here although I suspect many of you already know
20 what we're doing and why we're doing it but let's make sure
21 we make a good record of that.

22 And then let me get an idea of the four or five of
23 you that raised your hands, is there anyone here who's
24 going to be speaking in opposition to the draft rules or
25 statutes? A couple. Three. And then who will be speaking

1 in favor? I guess just Mr. Kole then.

2 MR. KOLE: I guess just so.

3 MR. KANE: Here's what I would propose to do.

4 Let's begin with Mr. Kole. I'll go ahead and ask you to
5 make your presentation and then I would ask each of the
6 three or four people that raised their hand in opposition
7 to come forward and let's get your testimony on the record
8 and then if no one else is here to speak in favor -- and
9 that may change depending on what you hear -- we'd ask you
10 to sign in and make a record and then I think probably the
11 best thing to do would have Mr. Kole wrap up the
12 presentation afterwards.

13 So with that in mind, Mr. Kole, the floor is yours.
14 Do we have -- let's get this in front of you so we're
15 getting you recorded.

16 MR. KOLE: Thank you very much, Mr. Kane. Why is
17 the IPC proposing these changes and why are these changes
18 necessary?

19 There's been a lot of changes in the Idaho potato
20 industry over the last several years and the statutes and
21 administrative rules that we operate under have not kept
22 pace with what those changes are. As would be evidenced by
23 a review of the opinion of the attorney general, our
24 current law contains a very strict definition of what
25 constitutes eligibility to be a grower commissioner of the

1 Idaho Potato Commission. That definition precludes in most
2 instances a grower commissioner from also being a grower
3 shipper or a grower processor.

4 As a result of that and the change in the industry
5 that has taken place where many of the growers are
6 participants in either a shipping operation or a processing
7 operation, whether as part owners of a packing shed or as
8 joint ventures with a processing company, lead us to come
9 to the industry to propose changes.

10 One of the most important things I'd like to note
11 here as we begin, the commissioners have not at any point
12 voted in favor of either these statutory proposals or of
13 these proposed administrative rules. What the
14 commissioners have done is they have voted to take these
15 out to the public in forums like this and obtain input
16 before they make their decision on what they will or will
17 not support.

18 So let's begin with how we are proposing to do
19 this. We are first proposing that there be a new chapter
20 placed into the administrative code that governs the Idaho
21 Potato Commission, Chapter 3. We currently have Chapter 1
22 which are the IPC's rules of practice and procedures which
23 were developed with the help of the attorney general's
24 office and provide a slightly different variation than the
25 attorney general's rules of practice and procedures because

1 the potato industry is slightly different than other state
2 agencies. We're not proposing any changes to Chapter 1 or
3 to Chapter 2 but we are incorporating the references to
4 those other chapters in what we have here.

5 The first ten rules are standard rules that are
6 contained in every administrative code chapter of the Idaho
7 Administrative Rules. The substantive changes begin with
8 Rule 11.

9 MR. KANE: Let me interrupt you. Are you referring
10 to a specific exhibit?

11 MR. KOLE: I am. I'm sorry. I'm referring to
12 Exhibit 111.

13 MR. KANE: Why don't we get that up on the screen
14 so we're all speaking about the same -- we're all seeing
15 the same thing at the same time. I'm sorry for
16 interrupting you.

17 MR. KOLE: No, that's fine.

18 MR. KANE: If you perhaps want to begin again on
19 what you were about to say.

20 MR. KOLE: No, I think that's fine. Let's go to
21 page 2. Just one more. No. Other way. Great. So as you
22 see, with Rule 011, we are proposing a new process by which
23 nominations will take place.

24 Now, let me contrast with what we currently do.
25 What we currently do is we provide a published notification

1 in the newspapers around the area where an either grower or
2 shipper or processor nominee would come from and invite
3 people to come to a public meeting held usually at a
4 location that is also publicized and at that public
5 meeting, make nominations for people to become eligible to
6 be commissioners.

7 We're proposing to change that to a mail-in ballot
8 process so that the commission will 45 days prior to March
9 31 of each year mail a notice to the affected growers,
10 shippers or processors with a call for nominations to the
11 Idaho Potato Commission. It will give the final date for
12 that notice to be submitted and require them to get a
13 nominating petition signed by three persons qualified to
14 vote for such candidates.

15 Then on or before March 15 after we have received
16 back those names, we will mail an eligible ballot to the
17 affected parties. Those parties then will have the chance
18 to review those ballots and also included in there will be
19 a statement from each candidate as to why they want to be
20 on the Idaho Potato Commission. It will also be possible
21 for anybody to reach out to their neighbors and in effect
22 campaign to be nominated to the Idaho Potato Commission.

23 After we receive that information, we will place in
24 their ballots a self-addressed envelope that will come back
25 to the Idaho Potato Commission office or to a certified

1 public accountant that we choose. Those ballots will then
2 be tabulated and they will then be returned to the
3 commission with the highest three nominees forwarded on to
4 the governor.

5 If there is a dispute, we provide a dispute
6 resolution process -- and, Jamie, if you go to the next
7 page -- that will deal with how a nomination dispute will
8 be resolved.

9 In addition to that, we have more clearly defined
10 what are the qualifications for a person to be nominated.
11 They have to be over the age of 18 years. They have to
12 meet the qualifications set forth about in 03 -- in 11-03.
13 They cannot be delinquent in the payment of their
14 assessments and they have to continue to have the
15 qualifications to be a commissioner that they had for a
16 nomination. The same is true for each shipper and
17 processor.

18 Each grower, shipper or processor may only vote on
19 one ballot and may only vote one time for each position to
20 be filled on behalf of themselves or any other of the
21 entities that are defined thereafter. They're entitled to
22 only one vote no matter how many farms, packing facilities,
23 plants, entities or any type of entity that they have an
24 ownership interest in. Once they make their choice, that
25 designation as a grower, shipper or processor continues for

1 three years.

2 In order to accomplish this though, we have to
3 change the statutes so, Jamie, if you could go to
4 Exhibit 113. Exhibit 113 incorporates, as I referenced
5 before, the requirement that the -- that a commissioner,
6 once they're appointed, serves at the pleasure of the
7 governor. We noticed as we were drafting this statute that
8 Custer and Lemhi County appeared twice in the areas where
9 grower commissioners could be appointed from and so to
10 correct that, we're striking Custer and Lemhi from one of
11 the districts.

12 If you go to page 2 of the statute, what you will
13 see is that we are taking out all of the current language
14 which talks about holding separate meetings of growers,
15 shippers and processors, publishing the notification of
16 this in the newspaper and setting forth the requirement
17 that this all be done prior to March 31 of the year of
18 appointment.

19 The reason for that is that commissioners' terms
20 don't begin until the middle of September, September 15,
21 and the governor's office indicated to us that they did not
22 want to have people in abeyance for that length of a period
23 of time. Instead, we have placed in this statute that the
24 rules which I've previously just talked about will be the
25 rules for nominating commissioners to the Idaho Potato

1 Commission. So these -- this statute, if you turn to page
2 3, contains an emergency clause.

3 Now, why is an emergency clause necessary? It's
4 necessary because under Idaho Code currently, a statute, if
5 it does not contain an effective date, goes into effect on
6 July 1. So if we did not have an emergency clause, then in
7 the next round of nominations in 2019, we would be required
8 to follow the old statute; not the new process that we're
9 talking about here.

10 Now, if you go to 114, please. You will see here
11 -- and this is where I anticipate there will be a lot of
12 discussion. This is a proposed redistricting of the
13 current grower commissioner boundaries. We have separated
14 this out because it is really a separate issue from the
15 nomination process itself.

16 What this would do would be to shift the current
17 districts more from the west to the eastern part of the
18 state. It would essentially combine, just for ease of
19 reference, the district that is currently occupied by
20 Commissioner Hasenoehrl and Blanksma into one larger
21 district with Commissioner Hardy and then create another
22 three districts to the west -- or to the east.

23 So this one does not contain an emergency clause
24 but rather if you look at page 3 of this proposed
25 legislation, it provides an effective date on line 23 and

1 24 that it would be full force and effect after September
2 1, 2020. And why was that date chosen? It was chosen
3 because Commissioners Hardy, Hasenoehrl and Blanksma, all
4 of their current terms end in 2020.

5 MR. KANE: If I understand you correctly, three
6 current commissioners --

7 MR. KOLE: That would be impacted.

8 MR. KANE: -- would be affected if this takes place
9 after the end of their terms.

10 MR. KOLE: Correct.

11 MR. KANE: Now, there are apparently two Blanksmas
12 in the room. Would that be Nick Blanksma you're speaking
13 about?

14 MR. KOLE: That would be Commissioner Nick
15 Blanksma.

16 MR. KANE: Okay.

17 MR. KOLE: The other Blanksma would be Commissioner
18 Blanksma's sister-in-law Representative Megan Blanksma.
19 Okay?

20 MR. KANE: Are they both commissioners?

21 MR. KOLE: No. She's a representative in the state
22 legislature.

23 MR. KANE: Well, I know that. Nick Blanksma is the
24 commissioner?

25 MR. KOLE: Yes.

1 MR. KANE: All right. Thank you.

2 MR. KOLE: Yes. As I said, I anticipate that this
3 is where most of the discussion today will be centered and
4 I want to reiterate that the current commissioners have
5 indicated to take this out to the public for comment and
6 want to hear what the industry has to say about this
7 particular situation.

8 The third one is Exhibit 115. Now, Exhibit 115, in
9 statute, clarifies the term "shipper" first and makes it
10 clear that each shipping entity is required annually to
11 designate who its voting representative to the commission
12 will be for commissioner nominations.

13 For grower, we have placed into this proposal some
14 requirements. Rather than say that you can only be a
15 grower and not a shipper or not a processor, we are
16 defining it that a grower's one who is actively engaged in
17 the production of potatoes and derives a substantial
18 portion of his income therefrom. And second, on page 2, is
19 not primarily engaged in shipping or processing of
20 potatoes. Third, grows potatoes on five or more acres.
21 Fourth, has been actively engaged in growing potatoes in
22 the State of Idaho for a period of at least three years
23 prior to nomination and has paid assessments to the
24 commission on potatoes in each of those three calendar
25 years. And then finally, each grower entity shall

1 designate annually who its voting representative to the
2 commission is and a representative who is designated may
3 only vote on one ballot in any election.

4 A couple of comments have been made about why five
5 acres. How did that come about? Five acres comes about as
6 a standard within the potato industry whether you're
7 talking about Potatoes USA also known as the National
8 Potato Board and many of the other commissions around the
9 United States.

10 It is used to do two things. First, many of us in
11 agriculture are familiar with what we know as activist
12 lawsuits. Activist lawsuits, for example, is somebody that
13 buys one share of stock in McDonald's, goes to the annual
14 meeting and then begins to make changes in corporate policy
15 or suggest changes in corporate policy.

16 So the five-acre requirement is designed to make it
17 clear that you have to have at least a minimal ownership
18 interest in a potato operation. At the same time, we had
19 to strike a balance because food safety doesn't know any
20 acreage limitations. Food safety is an important part of
21 protecting the Idaho brand and the Idaho seal.

22 As a result of that, we have many small potato
23 operations that are around five acres or more that involve
24 farmers' markets and other places where potatoes are sold
25 in the State of Idaho as Idaho potatoes. We wanted to make

1 sure that we had the ability to protect the industry from
2 those types of operations should there ever arise a food
3 safety issue.

4 The third part about actively engaged in growing
5 potatoes once again was to deal with the possibility of
6 activists purchasing a small acreage and not being actively
7 involved in the potato industry and paid its assessments
8 but suddenly want to come on to the commission to change
9 the direction of the commission against the better and
10 broader interest of the entire potato industry.

11 So those are the reasons why we have made these
12 criteria part of the proposal.

13 We had to deal differently with the term
14 "processor" because we have processors that are in the
15 state that are not licensed to do business but are
16 transacting business within the state. I anticipate that
17 based upon our research, we are going to have to change the
18 language about being licensed to do business in the State
19 of Idaho to conducting business in the State of Idaho in a
20 way that is consistent with the long-arm jurisdiction
21 statute currently set forth in the Idaho Code.

22 And the reason for that is, as I said, is that just
23 because you are in the State of Idaho conducting
24 business -- for example, Ore-Ida. They are located across
25 the border in Ontario but actively buy and purchase

1 potatoes in the State of Idaho. They are not licensed as a
2 corporate entity in the State of Idaho though. We want to
3 make sure that they are subject to the jurisdiction of the
4 commission and can participate to the extent possible
5 within the confines of the dictates of the Idaho Code.

6 MR. KANE: So do I understand then that you're
7 going to have another draft of this proposed statute?

8 MR. KOLE: We will. We will.

9 MR. KANE: By the time we get to Burley?

10 MR. KOLE: I hope so, yes.

11 MR. KANE: All right.

12 MR. KOLE: We're just completing the research on
13 that now.

14 MR. KANE: Just out of curiosity, I'm not sure if
15 it's pertinent but who licenses people to do business in
16 the State of Idaho as process --

17 MR. KOLE: Secretary of State.

18 MR. KANE: Okay.

19 MR. KOLE: So in a nutshell to draw this all into
20 hopefully an understandable bundle, the way that the law is
21 structured in this state, we have what are known as
22 statutes that are contained in the Idaho Code. These
23 statutes can only be changed by the Idaho legislature if a
24 piece of legislation passes the legislature and is signed
25 by the governor.

1 We have administrative rules. Administrative rules
2 can only be adopted if they're authorized by these
3 statutes. So before we can implement the administrative
4 rules that we are proposing, these statutes have to be
5 changed, passed by the legislature and signed by the
6 governor. If we get that done, then the rules that we're
7 proposing will be able to go into effect.

8 We have placed an emergency clause in the statutory
9 changes that we're talking about so that hopefully early in
10 the session of the legislature, we can get the law
11 clarified as to the definition of grower, shipper and
12 processor and then adopt these rules.

13 I have drafted these things so that they are
14 separate distinct policy choices. The choices that are
15 absolutely necessary are changing the definitions of
16 grower, shipper and processor and clarifying the
17 qualifications to be a commissioner. Those are the ones
18 that need the emergency clause to go into effect
19 immediately.

20 The one that is less of an immediate need is the
21 one that deals with the readjustment of the commissioner
22 alliance. And that's where I think this hearing needs
23 probably to focus as we go forward. So thank you very
24 much, Mr. Kane.

25 MR. KANE: Were you going to speak to me at all

1 about the wheat commission and the barley commission or do
2 you think you already covered it?

3 MR. KOLE: I think I covered that without the
4 pleasure of --

5 MR. KANE: All right. That completes your
6 presentation?

7 MR. KOLE: Yes, sir.

8 MR. KANE: All right. Thank you. All right.
9 Well, there are several people that have signed up but not
10 indicated by name, just by hand so far that they wish to
11 testify. Is there any determination as to who might go
12 first? Is someone speaking on behalf of others or --

13 MR. BLANKSMA: I'll go first if you want.

14 MR. KANE: Sure. Would you come on up here and
15 get -- get recorded and identify yourself, sir?

16 MR. SEARLE: Mr. Chairman. May I ask a question
17 for clarity before we move on?

18 MR. KANE: Sure.

19 MR. SEARLE: Pat, what is the timeline for any of
20 these changes if they were to take place? Is it after the
21 new session in 2019 or I mean can you just lead us through
22 what that procedure might look like?

23 MR. KANE: Would you go ahead and respond to that?

24 MR. KOLE: Yes, I will. So Kevin, what would
25 happen is we would hope that we would be able to adopt on a

1 temporary basis the administrative rules at the IPC meeting
2 in Sun Valley in August. The statutory changes we would
3 hope to have introduced at the beginning of January 2019
4 and we would hope that the legislature could act on that
5 prior to March 1 of 2019 because by March 1, we would have
6 to start the process under the existing law.

7 MR. SEARLE: Thank you.

8 REP. M. BLANKSMA: Can I point out procedurally
9 there is a little hiccup there?

10 MR. KANE: Can you identify yourself, please?

11 REP. M. BLANKSMA: Representative Megan Blanksma,
12 District 23B. There is a little hiccup there in that any
13 temporary rules adopted have to go through the legislative
14 process as well. So they're reviewed by the appropriate
15 committees so -- in the senate and in the house. So just
16 because the rules come through the potato commission
17 doesn't necessarily mean that they will be adopted as part
18 of IDAPA, just to clarify the process.

19 MR. KANE: Okay. This is beginning to turn into a
20 little bit of a free-for-all. Were you going to be
21 testifying?

22 COMM. HASENOEHRL: Later.

23 MR. KANE: All right.

24 COMM. HASENOERHL: But I just have one question.

25 MR. KANE: Go ahead.

1 COMM. HASENOEHRL: I just wanted to clarify. So
2 the comment we're making basically will just be on the
3 districts -- the commission districts or can we comment on
4 any portion of it?

5 MR. KOLE: Any and all.

6 COMM. HASENOERHL: Okay.

7 MR. KANE: My understanding is that I'm here to
8 take testimony on everything before us which would be all
9 proposed statutes and the proposed rule as well. That's
10 correct, correct?

11 MR. KOLE: Correct.

12 MR. KANE: All right. Are we ready, sir?

13 COMM. BLANKSMA: Yes, sir.

14 MR. KANE: All right. Let's identify yourself,
15 please.

16 COMM. BLANKSMA: Thank you, Mr. Kane. My name is
17 Nick Blanksma. I am a grower from Hammett, Idaho. I'm
18 also a commissioner on the Idaho Potato Commission and I'm
19 here to give my testimony about the proposed rule changes
20 under Idaho Code 22-1202, specifically, item no. 114.

21 MR. KANE: Okay. Let's -- let's get that out
22 before us and we can put that up on the screen so we all
23 know what we're talking about. So you're speaking Exhibit
24 No. 114, correct?

25 COMM. BLANKSMA: Yes, Exhibit No. 114.

1 MR. KANE: All right. And are you going to be
2 speaking to other exhibits as well or are you focusing on
3 this one?

4 COMM. BLANKSMA: This will be the only exhibit I'm
5 focusing on.

6 MR. KANE: All right. Okay. I have it before me.

7 COMM. BLANKSMA: I'm just here to state my case
8 that I am in opposition of redistricting at this time. I
9 would ask that all the parties involved allow more time to
10 hear comments from all parties in the industry regarding
11 redistricting. Combining the western districts of Idaho
12 which are now currently 2A and District 3 into one very
13 large district limits a large geographical area's
14 representation. I also feel that representation as it
15 stands is good and adequate. It's fair for all growers,
16 dehy, frozen or fresh, and represents Idaho's different and
17 unique growing regions the way that it was intended to do.
18 That's all I have, Mr. Kane.

19 MR. KANE: So I understand you, it's not the entire
20 process of redistricting that you have or just this one
21 area? Is that what you're saying?

22 COMM. BLANKSMA: No. I have a problem with all --
23 all of it but --

24 MR. KANE: All right.

25 COMM. BLANKSMA: That would be my reasoning for why

1 I don't feel redistricting is necessary at this time until
2 all parties have spoken. But that's why I don't care for
3 it.

4 MR. KANE: I confess. I come in as a complete
5 layman in this area so you're going to have to help me a
6 little bit.

7 COMM. BLANKSMA: You want me to help you?

8 MR. KANE: Well, yes. You're going to have to help
9 me a lot. Only to this extent. Is this -- just looking at
10 this, one might draw the conclusion this is based upon
11 population as opposed to area. Is that your understanding?

12 COMM. BLANKSMA: That is -- no.

13 MR. KANE: Okay.

14 COMM. BLANKSMA: The way the lines -- and you guys
15 can clarify if you'd like. The way the lines in the new
16 proposal are drawn up is similar to population but
17 production.

18 MR. KANE: Okay. Is that a problem?

19 COMM. BLANKSMA: With me, yes.

20 MR. KANE: Okay. Why would that be?

21 COMM. BLANKSMA: Because we produce across all of
22 the entire state and I feel that representation should be
23 wherever potatoes are grown across the state.

24 MR. KANE: Okay.

25 COMM. BLANKSMA: There is representation in the

1 proposed new districts now and I feel that it's adequate.

2 MR. KANE: All right.

3 MR. KOLE: Just to help clarify for the record.
4 The primary factor in looking at the redrawing of the lines
5 in this legislative proposal was based upon potato
6 production. An effort was made to have in five districts
7 as close to 20 percent as you could in each district.

8 MR. KANE: In each district?

9 MR. KOLE: Correct. However, even with that,
10 because of the greater production in the eastern part of
11 the state, it's still disproportionate slightly and I
12 believe what I think Commissioner Blanksma is pointing to
13 and maybe other people will talk to this too is that other
14 factors besides just production should be taken into
15 account.

16 COMM. BLANKSMA: Yes.

17 MR. KANE: Such as?

18 COMM. BLANKSMA: Well, such as where the product is
19 distributed and processed into. For instance, District 3
20 has less acres than it did when these statutes were first
21 implemented. Less acres produced here, less volume
22 produced here at this point in time. Whether that will
23 shift back or not, I'm not sure. But there is processing
24 facilities in these areas and the industry needs to be
25 represented to facilitate, you know, these folks' opinions

1 in the two districts they are proposing that are combined.

2 MR. KANE: Okay. Anything else as far as other
3 factors?

4 COMM. BLANKSMA: No.

5 MR. KANE: All right. Does that complete your
6 testimony, sir?

7 COMM. BLANKSMA: That completes my testimony.

8 MR. KANE: All right. Thank you very much. I
9 appreciate it.

10 COMM. BLANKSMA: Thank you.

11 MR. KANE: All right. Who else do we have here?
12 Have a box seat right here. Please state your name and
13 tell us if you're a commissioner and what you -- what
14 aspect of the industry you represent.

15 COMM. HASENOEHRL: So I'm Mary Hasenoehrl. I'm a
16 commissioner -- a grower commissioner on the Idaho Potato
17 Commission.

18 MR. KANE: Please tell me, how do you spell your
19 last name?

20 COMM. HASENOEHRL: Hasenoehrl. Didn't you hear me?

21 MR. KANE: I did but I'm not that good.

22 COMM. HASENOEHRL: H-a-s-e-n-o-e-h-r-l.

23 MR. KANE: Yes. Well, that was very phonetic. And
24 tell me again, you're a commissioner as to what?

25 COMM. HASENOEHRL: On the Idaho Potato Commission

1 and I'm a grower in the Wilder area.

2 MR. KANE: Okay.

3 COMM. HASENOEHRL: So I agree with Commissioner
4 Blanksma for the same reasons that he just stated. One
5 thing I would like to add is that I feel and there will be
6 arguments against this but I feel that we need to have a
7 representation of processing, dehy and fresh, an equal --
8 and so in our area, we tend to grow more processing and
9 dehy than fresh potatoes.

10 MR. KANE: And the way the districts are proposed
11 would make for uneven representation as to processing and
12 dehydration?

13 COMM. HASENOEHRL: In my opinion -- yes, in my
14 opinion.

15 MR. KANE: Okay. All right. Anything else?

16 COMM. HASENOEHRL: That's it. That's it. I agree
17 with all the other changes that are proposed.

18 MR. KANE: Okay.

19 COMM. HASENOEHRL: I think they're needed and I
20 appreciate that.

21 MR. KANE: Okay. That would be the rule proposal
22 and the other two proposed statutes?

23 COMM. HASENOEHRL: Uh-huh, uh-huh.

24 MR. KANE: So it's 114 that's in play here.

25 COMM. HASENOERHL: Right. Correct.

1 MR. KANE: Okay. Thank you very much. Okay.
2 Thank you very much. Who else do we have here?

3 REP. M. BLANKSMA: Okay. So I'm Representative
4 Megan Blanksma representing District 23 which is Owyhee,
5 Elmore and a part of Twin Falls County. My concerns are
6 broad. Some of them have already been addressed.
7 There's -- I also have concerns with the rules that haven't
8 been addressed right now.

9 I think that instead of submitting the rule changes
10 as they are, I do have them in with the -- for an opinion
11 with the AG because I'm concerned about compliance with the
12 APA changes that we made over the last legislative session
13 and the exemptions called for under 003, administrative
14 appeals, and your Public Records Act Compliance Exemption
15 that you provide for yourself in Rules 52 and 233.

16 I also wanted to point out that there's a lot of
17 clean-up that could be done in these rules that you could
18 do at the same time if you were to look at the other
19 commissioners within the State of Idaho instead of looking
20 for rules outside of the State of Idaho. For example, a
21 better structure on 005 when you look at your office hours
22 and mailing address, if you just look at the barley
23 commission rules, you can do a lot of clean-up instead of
24 just adding the particular sections that you want on your
25 rules.

1 So those were a couple of things that I wanted to
2 point out to see if possibly you could make those changes
3 rather than just your elections changes that you want to
4 make as part of a full rule clean-up if you're going to do
5 it. So other than that, those are my comments at this
6 time.

7 MR. KANE: So if I understand you correctly, you
8 have the same concerns that have already been expressed
9 regarding Exhibit 114 involving the redistricting
10 structure?

11 REP. M. BLANKSMA: Yes.

12 MR. KANE: And then in addition to that, you have
13 some suggestions regarding some of the rules that are not
14 at least at this time before me. You're suggesting that --

15 REP. M. BLANKSMA: They're part of the sections
16 that are presented as part of their changes.

17 MR. KANE: Okay.

18 REP. M. BLANKSMA: As presented to me, the copies
19 that I have don't have the changes underlined. They just
20 have the Rules 0 through 1306 so it's not a full copy of
21 the rules that was presented to me. I had to go look it up
22 in statute and so it's not specifically delineated what the
23 changes are unless you go to statute and compare it with
24 the rules that were provided by the commission --

25 MR. KANE: Okay.

1 REP. M. BLANKSMA: -- to find the changes.

2 MR. KANE: And so if I heard you right, 003 is what
3 now?

4 REP. M. BLANKSMA: 003 is administrative appeals.

5 MR. KANE: And you have a request --

6 REP. M. BLANKSMA: It says it's governed under the
7 commission's rules and my point is just that you can make
8 that as under Idaho Code 5267 which is exactly what -- I
9 just used the barley commission as an example because it's
10 an easy place to start and their rules are three pages and
11 it kind of streamlines things a little bit to just say
12 that.

13 MR. KANE: All right.

14 REP. M. BLANKSMA: And there's an exemption called
15 for under the 6 that was except as provided by Rules 52 and
16 233 and that's the one that I want to just make sure that
17 that's in compliance with the APA and that's what Brian
18 Kane said that he would look for for me.

19 MR. KANE: Do we have any idea when he might have
20 something to be reviewed?

21 REP. M. BLANKSMA: I'm not in charge of the AG's
22 office. If I was, things might be different but they're
23 not. All I can do is submit my requests and I'm not the
24 only one with requests over the summer so --

25 MR. KANE: Sure. So okay. Well, I guess maybe

1 we'll -- it would be helpful if we had something prior to
2 the close of the hearings or at least by the close of the
3 submittal of written materials.

4 REP. M. BLANKSMA: There was one other thing that I
5 wanted to point out in this whole serving at the pleasure
6 of the governor. If you look at the rules like in the
7 wheat commission, there's a caveat in there in that you
8 have to have a majority of the commissioners submit that
9 name to -- and to serve at the pleasure of the governor, as
10 a member of the legislature, that gives me heartburn
11 because I don't know that you really want this to be a
12 rotating door.

13 So if you put that in language, then what you've
14 said is the governor can change his mind on any of your
15 appointments any time he feels like it. So that might be
16 one that you want to revisit so that if you want that to be
17 that way, then I suppose the commission can vote on it but
18 I would suggest that you might want to put some parameters
19 on that.

20 MR. KANE: Okay. Anything else?

21 REP. M. BLANKSMA: No. That's my comments.

22 MR. KANE: Pat, you had your hand up. It's a
23 little bit unusual to do it this way but we have so few
24 people testifying. Why don't you go ahead and address the
25 legislator's ideas.

1 REP. M. BLANKSMA: We're all friends.

2 MR. KOLE: I think they're excellent. We
3 specifically though were directed by the governor's office
4 that we could not make anything other than mission critical
5 changes and while I really want to go and clean up some of
6 the administrative code, we were told we have to wait until
7 next year to get that in.

8 REP. M. BLANKSMA: Right. But this one could be --
9 that's why I submitted the one to the AG because it could
10 be not in compliance with actual code, your rule might not
11 be, and that's why I -- I suspect that that should be a
12 change in particular because you want to be in compliance
13 with code.

14 MR. KOLE: Right.

15 MR. KANE: When you mention "this one," are you
16 speaking to the administrative appeal question?

17 REP. M. BLANKSMA: No. It's 006. So the Public
18 Records Act Compliance where there's two exemptions over
19 what has to be subject to inspection. And I don't know
20 that those can be exempted under the APA and that's why I
21 requested that the AG check that and if it's fine, it's
22 fine. It was just any time you look for an exemption on
23 something, it red flags it.

24 MR. KANE: Okay.

25 MR. KOLE: The other part on the "at the pleasure

1 of," again, we went to the governor's office, met with
2 them, asked them could we put some parameters such as for
3 cause and we were told no. Because we're an executive
4 branch agency, that's something that would have to be dealt
5 with by the legislature as opposed to --

6 REP. M. BLANKSMA: Then I would suggest that
7 perhaps it's not a mission critical statement and that
8 perhaps if I'm the potato commission and don't want it to
9 read that way would not bring forward that legislation.
10 That's just a suggestion that I would make. If the
11 parameters set forward by the governor were to do mission
12 critical only legislation and rule changes, unless that is
13 mission critical to have all of these positions at the
14 pleasure of the governor, I would suggest that you don't
15 submit that particular portion without any parameters on
16 it.

17 MR. KOLE: The difficulty that we've got is that
18 section of the code is the section we have to amend in
19 order to get rid of the nomination language in the statute.
20 So when we went down and said, please, do we have to
21 include this if we open up this section of the code, the
22 answer was yes.

23 REP. M. BLANKSMA: I think your success rate --
24 I'll just repeat what I said. I think your success rate in
25 the legislature might be slightly better with that

1 particular language with zero parameters on it removed and
2 that's just my feeling. It's not the law. That's not the
3 rule. It's not -- that's just my feeling that that is a
4 very difficult piece. I can understand absolutely why the
5 administration would want that in there but as a legislator
6 and as a grower because we're partners with Nick in this
7 whole thing, it bothers me at some point that growers
8 aren't in control of their own money and their own
9 commission. So that would be my comment.

10 MR. KANE: I guess I would just ask, is there any
11 room for maneuver? Obviously legislators have the ability
12 to seek amendments to legislation and are there any
13 discussions along those lines and if not, can there be?

14 REP. M. BLANKSMA: I don't know that that's
15 appropriate to bring up in a hearing.

16 MR. KANE: Okay. All right. Well, thank you.

17 REP. M. BLANKSMA: Uh-huh.

18 MR. KANE: All right. Anyone else wish to testify?
19 Yes, sir. Come on up here.

20 MR. GROSS: Thank you, sir. My name's Doug Gross.
21 I'm a grower from Wilder, Idaho.

22 MR. KANE: Could you please spell your last name?

23 MR. GROSS: G-r-o-s-s.

24 MR. KANE: Wilder. And you are a grower?

25 MR. GROSS: I am a grower. Both a fresh grower and

1 a process grower.

2 MR. KANE: Okay.

3 MR. GROSS: So I would support any -- the changes
4 as proposed in the qualifications for the commissioners. I
5 think the industry needs some considerable changes. The
6 grower population in the last 50 years has been reduced by
7 90 percent. There's a lot of vertical integration and I
8 feel like there's an opportunity for grower/shippers to be
9 good qualified commissioners and it could work the same
10 with a processor too.

11 MR. KANE: So you said you support the
12 qualification aspect --

13 MR. GROSS: That's right.

14 MR. KANE: -- of the various bills.

15 MR. GROSS: So this would be the practice and
16 procedures? Is that correct? I don't fully understand the
17 code here.

18 MR. KOLE: The process. The nomination process.

19 MR. GROSS: Yes. The nomination process.

20 MR. KANE: Okay.

21 MR. GROSS: And voting procedure. Yes, I would
22 fully support the change.

23 MR. KANE: All right.

24 MR. GROSS: I do not support the redistricting as
25 it's been proposed currently. I fear that this proposal

1 would open it up for a possibility of one sector to take
2 control of the commission versus right now the fry industry
3 pays 55 to 60 percent of the dues -- the income that goes
4 to the commission.

5 MR. KANE: So your concerns are somewhat different
6 than what I'm hearing from some of the others. They were
7 more concerned about I think the size of the district and
8 the amalgamation and perhaps the unfairness of the
9 proportion and you're coming at it from a different
10 direction saying that certain parts of the industry would
11 have more control?

12 MR. GROSS: Could hijack -- could hijack because of
13 the way the districts are laid out and I don't want -- I'll
14 be blunt. In this fresh industry which currently pays
15 about 30 percent of the (inaudible) tax could end up with a
16 majority control of the growers on the commission.

17 MR. KANE: Okay. And do you have any suggested
18 potential changes then to the language that might remedy
19 that issue?

20 MR. GROSS: I think we need to take our time as we
21 look through the board -- the boundaries here that still
22 would allow for the fry industry and dehy industry to
23 continue to be represented.

24 MR. KANE: Okay. You're asking for more time.

25 MR. GROSS: Yes.

1 MR. KANE: Okay.

2 MR. GROSS: That concludes my --

3 MR. KANE: Thank you. I saw a hand way in the back
4 there. Are you still in this?

5 MS. MICKELSEN: Yeah. Absolutely.

6 MR. KANE: Okay. Come on up here.

7 MS. MICKELSEN: My name is Stephanie Mickelsen. I
8 am --

9 MR. KANE: Slow down. Please spell your last name.

10 MS. MICKELSEN: Like Mickey Mouse.

11 M-i-c-k-e-l-s-e-n.

12 MR. KANE: E-n.

13 MS. MICKELSEN: Yes. I am a potato grower, I'm a
14 potato shipper and I'm a potato processor.

15 MR. KANE: Okay. And from --

16 MS. MICKELSEN: Eastern Idaho.

17 MR. KANE: Okay.

18 MS. MICKELSEN: Okay. First off, I'm going to
19 speak to the redistricting because that was kind of what's
20 up here at the moment.

21 MR. KANE: 114.

22 MS. MICKELSEN: Yes. 114. When people say that
23 they're concerned about redistricting because they think
24 that certain segments would hijack the commission, I think
25 that's kind of incorrect because most growers grow -- grow

1 different like -- they grow process and they grow fresh.
2 They grow process, fries and other things and so to think
3 that one district -- the district that has 3 percent and a
4 district that has 16 percent shouldn't be combined when you
5 have a district that has 70 percent and gets two votes is
6 very inequitable and all sectors of the potato industry
7 would be served by having 20 percent, thereabouts, in each
8 different district. Because simply by who grows where,
9 you're going to have a mixture of growers represented.

10 One thing that we would suggest is that the shipper
11 positions be split up kind of east to west or something.
12 Split those in half so that you don't have a situation
13 where you have two potato sheds five miles apart both
14 having seats on the commission at the same time and the
15 same thing goes with the processor.

16 I would also suggest that rather than change the
17 Idaho Code for the districts that we just specify within
18 the code that the districts shall be as reasonably close to
19 a certain percentage as possible and then change it in our
20 IDAPA code so we're not required to go back to the
21 legislature every so many years to get them to reopen the
22 code section on the districts.

23 And we all have this in the world. Things change
24 and the Boise valley has become a very people-populated
25 valley and not a very crop-populated valley and so

1 obviously those districts and things will change over time
2 because of the fact that you have those changes that
3 naturally occur. So that would be one of my suggestions is
4 that we do that in the IDAPA code and, like I say, that we
5 change the shipper and the processor districts.

6 MR. KANE: Before are -- you sound like you're
7 getting ready to shift gears here.

8 MS. MICKELSEN: Yep.

9 MR. KANE: So you're suggesting simply eliminating
10 the language that's in 22-1202 that is currently proposed
11 to be eliminated and not replace it with anything except
12 leaving it to the rules.

13 MS. MICKELSEN: No. Leaving it to IDAPA rules to
14 have even districts for grower commissioners and then have
15 it in the code section to specify that the shipper
16 positions shall be -- you split however many shipping
17 facilities you have in half and basically you have a
18 shipper represent each one of those sides so that you don't
19 have two shippers from eastern Idaho and nothing from say
20 the Burley area where you have a fair amount of fresh
21 shipments that take place.

22 MR. KANE: Okay. Okay. Got it.

23 MS. MICKELSEN: And then, you know, with the
24 processors, you have some of the same thing. You have some
25 processors that are dehydrated processors. You have some

1 processors that are fryer processors and you have some
2 processors that make mashed potatoes like we do, okay?

3 MR. KANE: So what I'm hearing you tell me is you
4 don't believe this statutory scheme is inclusive enough?

5 MS. MICKELSEN: No, I don't. And I think it's
6 better handled within IDAPA codes that are well vetted over
7 time than it is to piecemeal stuff together at this point.

8 MR. KANE: Okay. Thank you. Did you have some
9 other --

10 MS. MICKELSEN: I have more comments. I personally
11 think that right now rather than piecemealing back together
12 the code section, I think that it is time for a complete
13 rewrite of the potato code section. If you actually read
14 and study through the code section, there are some huge
15 problems all the way through there and so to just piecemeal
16 a little bit of it rather than sit down, take the time and
17 rewrite the code section correctly, you're just going to
18 get what's happened in the past is where you try to read
19 and figure out what they're really saying and somebody came
20 in and added this and really didn't take away that and the
21 code section doesn't have a lot of clarity. And I think in
22 order for us to create clarity in the code section, I think
23 it's going to take a complete rewrite of the code section.

24 MR. KANE: Okay.

25 MS. MICKELSEN: I didn't get any of his exhibits or

1 anything so the first time I saw them was right here. Part
2 of the -- I do have a problem with the section where they
3 talk about a person who is once a grower can't vote again
4 for three years or something else, yada, yada, yah.

5 In Idaho under -- when you look at entities -- and
6 we've spoken with legal counsel. We understand legal
7 entities. To say that you can't have a person represent
8 them be the same person that represents a grower --
9 represent a grower entity, represent a shipper, represent
10 facility or a processor is kind of ridiculous because at
11 the end of the day, we are those three things.

12 Now, whether or not we can physically have somebody
13 possible -- or at those meetings when you guys wanted to
14 have those meetings is another thing. And so I think that
15 we would be better served by allowing those entities to
16 have a vote regardless whether or not it's Mark Mickelsen
17 that signs as a grower today and he signs for his potato
18 warehouse that he owns and then he signs for his processing
19 facility that he owns. He has a right to have
20 representation for those three entities.

21 So you are disenfranchising people by saying, "Oh,
22 if you voted as a grower, for three more years, you can't
23 vote as such and such." That's crazy. It's just -- it's
24 ludicrous and it's narrow-minded because our potato
25 industry is changing and we need to be changing with it.

1 I'll go through what my comments were and hopefully
2 wrap up back to all of the rest of this. In the Idaho
3 Potato Commission Section Code 22-1202, it specifically
4 states in the first -- very first couple of lines right
5 there that the Idaho Potato Commission is a self-governing
6 agency.

7 So when I see that we want to put in commissioners
8 based upon them at the leisure of the governor or at the
9 pleasure of the governor, I have serious heartburn because
10 the governor's not the one that pays this assessment. It's
11 the growers in this state that pay this assessment and the
12 thing that I've heard by and large up and down the valley
13 is they want the politics out of -- out of the procedures
14 of who goes on as our commissioners. They want it to be
15 something that the growers are heavily involved in, that
16 they have a say in and have a stake in. So I would bring
17 your attention to that line before you think you ought to
18 change it to pleasure of the governor.

19 And a grower, currently in the code, it doesn't
20 really -- it just says I have to produce. It doesn't say I
21 have to own those acres. So for that matter, it could be
22 my hired guy decides that he wants to come to the potato
23 commission meetings. Therefore he wants to get enough
24 friends and he wants to serve on the potato commission.
25 Well, he isn't the one who's actively been paying those

1 dues in the past. I have been. And so it needs to be
2 people on this commission who are the people that are
3 actually paying the bill.

4 So I would think the grower in 22-1202 where it
5 asks for the definition of a grower that we say a grower is
6 anyone or their immediate family who actively owns and
7 operates a potato-producing farm of more than five acres.
8 We want to make sure though that if those five-acre groups
9 are coming in and everything that they're paying the tax.
10 If they're getting our Grown in Idaho label, then they need
11 to be making sure they're participating with the rest of
12 us.

13 I think we need to get rid of the code section that
14 says the grower can't be engaged in shipping or processing
15 channels because that's not the reality of today's world
16 that we live in.

17 Also, entities need to be well defined. It was
18 very vague in the code section. When you look under
19 definitions in 22-1202 about -- it says an individual is --
20 and then it goes through three or four definitions,
21 whatever. So we need to define what an entity is and if
22 we're going to be so selective in our code section that
23 we're going to say they can't have the same owners, they
24 can't have this, well, then on the flip side of that, then
25 I ought to be able to vote my production.

1 So if you're not going to allow legal entities that
2 have existed for 15 years to vote and have paid taxes, then
3 on the other hand of that same thing, you need -- you need
4 to have a way for them to be able to have a voice because
5 for somebody that grows five acres and they get one
6 voice -- one vote and somebody that grows 10,000 acres or 4
7 million sacks or whatever and get one vote and they might
8 have 10 owners, that's not equitable. That's not even
9 close to equitable.

10 So we have to figure a way and if you actually read
11 the code section later on down when it talks about the
12 assessments, it said 50 percent of the vote of the growers
13 that -- or 50 plus 1 or something growers that represent at
14 least 50 percent of the production.

15 So at some point in all this statute changing and
16 cleaning up, we have to address the issue of production
17 because if anybody ever wants to run a referendum or we're
18 actually taking a vote on say how much, you know, we're
19 going to be assessed, we have to know what people's
20 production is an it has to be a part of the equation.

21 So whether you do that through -- they get to vote
22 what their last year's assessment was or they get to vote
23 what their last year's production was, however that works
24 out, we need to be able to have a way because clearly at
25 some point, the legislature intended for growers to be able

1 to have some say in their commission. So for that to
2 occur, we have to either be able to vote our production or
3 something -- or acres or something like that.

4 I would suggest that we need to change our
5 nominating and voting procedures in the following way: I
6 think we ought to have nominations open for a one-month
7 period and I would suggest we get away from this August
8 thing because you guys -- when I've been here before, you
9 say, "How do we get those growers to engage with us?"
10 Growers do not have time in the end of August to go to a
11 golfing meeting in Sun Valley with the shippers who that is
12 their down time. That's typically a time that a lot of
13 growers, especially in our region, I don't know about the
14 other -- the western part of the state but that is a time
15 when they are harvesting wheat and sometimes two or three
16 days makes a difference of whether or not they get their
17 crop in or whether or not their falling numbers are so bad
18 that they can't get their grain crop in.

19 So I think we need to move that nomination to say
20 the fall or winter when growers -- now, you could do the
21 shipper -- the shipper nominations and you could put the
22 shipper guys on the commission at a different time than you
23 put the grower -- the growers in. You could put them in --
24 you could put the grower commissioners in in January and
25 you could put the shipper commissioners in in their August

1 meeting.

2 I think the commission shall collect the names and
3 contact information for all grower entities and then I
4 would suggest that you have a nomination signed by at least
5 six growers in the region so they go out and really have a
6 feel for whether or not people are supporting them and then
7 after you get those back, have a couple week period. Put
8 together a ballot. Send it back out and have those
9 entities -- and I know they do this because I have all
10 kinds of -- whether it's the co-op or whether it's the Farm
11 Credit Services or whatever, they send you out a paper
12 ballot. They give you a code so you can either
13 electronically vote or you can send it back in the mail if
14 you want to use snail mail so that people have a way to
15 have their voices heard because that March date does not
16 work for a lot of people. They're on spring break or
17 they're starting back in planting or things like that so I
18 think we need to stay away from that as far as if we really
19 want to reach out to the growers and we want to connect
20 with them as a commission, that's some of what we got to
21 do.

22 I would suggest that under the code, we say that
23 boundaries will be realigned every 10 years to balance the
24 districts as much as possible and then handle that under
25 the IDAPA code along with the nominations procedures and

1 those kind of things. Let's see.

2 I think you ought to get rid of Code Section
3 22-1208. I think it's just a bunch of fluff and I know
4 that this code section was like written in the 1940's or
5 something and then it got changed in the 1970's and then it
6 got some things added here back in the 2000's or something
7 or late '90's but I think if you really want to make your
8 code worth something and say something, I think you need to
9 be concise.

10 Code Section 22-1211 which talks about tax levies,
11 I suggest that it say the Idaho Potato Commission impose
12 tax that has been voted on and approved by a majority of
13 the growers that represent a majority of the acres shall be
14 assessed per hundredweight. There's two code sections in
15 there and I believe it's 2212, 11A and B or something like
16 that and you have to go read the one to try and understand
17 what the second one is saying and then it comes back that
18 if we want to raise the tax, then suddenly now the
19 commissioners can do it rather than it be approval by the
20 growers.

21 If in fact you want the commission to make the
22 decision, then I think that we need to make it so that the
23 growers have the ability to have a refund of their tax
24 because they aren't being able to vote as to whether or not
25 they want -- they want to have their taxes raised.

1 Then in 22-1211(b), it needs to have very clear
2 provisions for levy of -- or for referendums on the
3 commission and I actually think this needs to be probably
4 consistent language for all commissions to have ways to run
5 referendums.

6 When we in fact went and asked -- under the code
7 section, it says you can ask for a referendum. So we went
8 to the Department of Ag and we asked them how we could run
9 a referendum. They were told, "Give us a week." They came
10 back to us after a week and they said, "Well, call the
11 potato commission," and we called the potato commission.
12 They said, "Give us some time," and they couldn't really
13 figure it out either.

14 So the code section is so bad that you have no way
15 to run a referendum on any commodity commission or the
16 potato commission and so there needs to be a very concise
17 section on how to run referendums because ultimately at the
18 end of the day, if this is a commission that's at, you
19 know, the pleasure and leisure of the governor then let him
20 pay the tax and let him finance it with the taxpayers of
21 the State of Idaho's funds.

22 If it's my commission as a grower, all of us as our
23 commission, then we ought to be able to have the ability to
24 make changes if we see things are not being run in the
25 right way. And so we would have a referendum section that

1 says 10 percent of entities that represent 10 percent of
2 the potato production could request a referendum and you
3 could run a referendum. And then for a referendum to pass,
4 it would have to have at least 50 percent plus 1 vote that
5 represents at least 51 percent of the potato production in
6 the State of Idaho. And that the results of that
7 referendum will be made available to the growers.

8 A couple other comments I have, I think that
9 sometimes we think we have to make people in the political
10 world happy but we are the government. We are the potato
11 commission and we ultimately have the responsibility to
12 make it what we want it to be and to have the vision that
13 we see and maybe there needs to be some revamping of
14 different parts and perspectives of the commission and we
15 can't have that ability under the current code section
16 anywhere through the potato section. So those would be my
17 comments.

18 MR. KANE: Okay. You're referring to some
19 writings. There is an opportunity to submit written
20 comments. You went over a lot. Would you have any
21 objection to sending --

22 MS. MICKELSEN: No, I have no problem like I say
23 and I would like to get a copy of this because I didn't
24 receive a copy of that and we had been on the Potato Pulse
25 and suddenly we weren't there and if somebody hadn't sent

1 it to me, I wouldn't have known that they were trying to
2 make these administrative changes.

3 MR. KANE: I would urge you to go ahead and do
4 that. As Mr. Kole said, this is more of a listening --

5 MS. MICKELSEN: Right.

6 MR. KANE: -- process than almost anything else so
7 if you want to do that, that would probably be a really
8 good idea.

9 MS. MICKELSEN: Okay.

10 MR. KANE: All right. Anything else?

11 MS. MICKELSEN: You don't have any questions for
12 me?

13 MR. KANE: No. Actually I think I followed it
14 pretty well. Thank you.

15 MS. MICKELSEN: Okay. Thank you.

16 MR. KOLE: Just a couple of comments. We actually
17 found out that when you unsubscribed from the Pulse, we
18 couldn't re-subscribe you and it's part of the program so
19 there is nothing we could do there.

20 MS. MICKELSEN: We had our e-mails like changed and
21 we couldn't have access to those so maybe that kicked it
22 out. I have no idea.

23 MR. KOLE: All right. And then the other part of
24 it is all of this stuff is posted on our web page.

25 MS. MICKELSEN: How do you find it? Because I

1 tried to find things previously and it's been really
2 challenging so it would be nice to know how to find it.

3 MR. KOLE: I think it's right on the front page.

4 UNIDENTIFIED SPEAKER: It's just right on the
5 industry tab.

6 UNIDENTIFIED SPEAKER: It's also on the home page
7 too.

8 UNIDENTIFIED SPEAKER: Go to the home page and it's
9 going to be one of the first things you -- keep going.

10 MS. MICKELSEN: Okay. Very good. Appreciate it.

11 MR. KANE: Thank you.

12 MS. MICKELSEN: Thank you.

13 MR. KANE: All right. Anybody else that wishes to
14 speak either in favor or in opposition? I'm not seeing any
15 volunteers.

16 Then I think, Mr. Kole, this is your opportunity
17 if you want to wrap up and perhaps address some of the
18 points that have been made.

19 MR. KOLE: Mr. Kane, I think I've addressed those
20 as they've come along. I think I look forward to the
21 written comments coming in. I think to a large extent,
22 there is agreement that the definitions of grower, shipper
23 and processor need to be modernized. I think the other
24 parts would be very problematic as far as getting the sign-
25 off from the executive branch to be able to proceed.

1 MR. KANE: By "other things," you're speaking about
2 things like changing the procedure for referendums or some
3 of the other things we heard about, getting rid of 22-1208.

4 MR. KOLE: Right. Those would be -- those -- we
5 specifically raised those issues when we were talking to
6 the governor's office and we're told that that would not be
7 acceptable. So I think in fairness, what they're trying to
8 do is to -- whoever the new governor is is to not have an
9 executive branch package of legislation that goes beyond
10 what is absolutely necessary. Let the new governor get on
11 their feet and then in the session after this deal with a
12 lot of these issues.

13 I don't disagree that there are probably parts of
14 the code that we would like to see modernized. It's just
15 at this stage, we cannot get that proposal through.

16 MR. KANE: Okay. Do you have anything else in
17 light of the comments that you heard?

18 MR. KOLE: No, but I would ask if Mr. Muir has any
19 comments he would like to make.

20 MR. MUIR: I really appreciate everybody being
21 here. I thought this was a very good first hearing
22 session. I knew on this side of the state there would be
23 push back on the proposed redistricting. It was good to
24 hear that. We've heard it within the commissioners. So it
25 was good to have the two commissioners who are opposed to

1 that speak up and hear about that.

2 Obviously as we go to the east side of the state,
3 we probably will hear the other side and that's what this
4 hearing session is all about. So we will do our very best
5 I think as speaking for the commissioners here to hear
6 everybody's comments and any written commentary that is
7 added on will be beneficial to us.

8 As you can tell, just by the fact the two
9 commissioners testified against the proposals that the
10 commission sign up, we're open to feedback. This is not a
11 done deal. It's not a rubber stamp anybody's looking for
12 here. So I think it's important that everybody understands
13 that that we are seriously about hearing the feedback.
14 Thank you. Thanks for being here.

15 MR. KANE: All right. Well, it sounds like this is
16 a work in progress. I mean I've already heard that one of
17 the proposed statutes that we've looked at today will have
18 some potential changes to them. I would suggest that if
19 there are other things that the commission staff wishes to
20 change, obviously in consultation with the rest of the
21 commission, then by all means get it by the next hearing
22 date which is next week, July 31.

23 So especially what apparently there has already
24 been agreement to change, let's get that to me in advance
25 and then I look forward to hearing what other potential

1 changes there are going to be in light of what we heard
2 today.

3 So unless there's anybody else here that wishes to
4 speak, I think we are -- yes, sir.

5 MR. WILCOX: Yeah. I do have one comment. My name
6 is Lynn Wilcox.

7 MR. KANE: All right. Let's make sure you're being
8 recorded. You want to come up a little closer?

9 MR. WILCOX: Okay.

10 MR. KANE: And W-i-l-c-o-x?

11 MR. WILCOX: W-i-l-c-o-x. That's correct.

12 MR. KANE: L-y-n-n?

13 MR. WILCOX: L-y-n-n.

14 MR. KANE: All right. And you are from --

15 MR. WILCOX: I am currently chairman of the Idaho
16 Potato Commission. A grower and shipper in eastern Idaho.

17 MR. KANE: All right.

18 MR. WILCOX: Our shipping operation deals with a
19 number of small growers. I have a concern on behalf of the
20 small growers and that is that with the consolidation
21 that's taken place in the industry over the past few years,
22 there's no question these small growers are becoming less
23 and less viable and their voice becomes less and less
24 recognizable to the industry.

25 I have a concern that if we put so much power in

1 the hands of large growers and my entity that I represent
2 is a relatively large grower, we could completely eliminate
3 the voice of the small farmer and I don't think that's in
4 the best interests of our industry.

5 So I would suggest that even though many growers
6 are possibly insignificant in terms of the entire
7 production of the State of Idaho, we figure out a way to
8 keep some voice in their hands so that they have some
9 representation. And that completes my comment.

10 MR. KANE: So what I'm hearing then is that you are
11 focusing on Exhibit 114 which is the redistricting. Is
12 that correct? Or are you focusing on a different
13 proposed --

14 MR. WILCOX: I think I'm just focusing on how
15 representation to the industry is distributed and I'm
16 sorry. I can't tell you exactly which section that is.

17 MR. KOLE: Perhaps, Mr. Kane, I could help just a
18 little bit. Based on some of the comments that were made
19 as the commission considered this, I believe what Chairman
20 Wilcox is saying is that he is a believer in the concept of
21 one man, one vote.

22 MR. WILCOX: That would be correct. I don't think
23 that we can remove the voice of the small grower and
24 maintain family farms. And maybe we're too far down the
25 road already to maintain a family farm but I would be very

1 reluctant to hasten the demise of the family farmers.

2 MR. KANE: Well, do you believe that any of the
3 things that we've heard about today is doing that?

4 MR. WILCOX: I think some of the suggestions that
5 were made today would hasten the demise of the family farm,
6 yes.

7 MR. KANE: Suggestions made by opponents to 114 in
8 particular?

9 MR. WILCOX: Yes.

10 MR. KANE: So you're in favor of 114.

11 MR. WILCOX: I am in favor of 114.

12 MR. KANE: All right.

13 MR. WILCOX: And that concludes my comment.

14 MR. KANE: All right. Thank you. All right.

15 Well, any other volunteers? I'm not seeing anyone. Do you
16 wish to do any further wrap up, Mr. Kole?

17 MR. KOLE: No. Thank you.

18 MR. KANE: All right then. It is now -- we're just
19 about one hour and 24 minutes in. Unless anyone else has
20 anyone else, I am now going to officially conclude this
21 proceeding and we can go off the record and then we'll see
22 at least some of you it sounds like in Burley.

23 (Proceedings concluded.)

24

25

STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed transcriber, do hereby certify:

That the foregoing transcript is a transcript of an audio file made of the proceedings in the matter of Idaho Potato Commission Rulemaking Hearing held July 24, 2018; that the foregoing pages 1 through 62 of this transcript contains as accurate and complete a transcription of said audio file as I was able to make.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2018.

 _/s/ Tamara A. Weber _____
 TAMARA A. WEBER, CSR
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